

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 99-0566P

Sales & Use Tax

Calendar Years 1996, 1997, & 1998

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the negligence penalty.

STATEMENT OF FACTS

The negligence penalty was assessed on a use tax assessment resulting from an audit conducted for the years 1996, 1997, & 1998.

The taxpayer's principal business activity is that of providing engineering service to manufacturers in Indiana, Illinois, Kentucky, and Tennessee. Services are performed in Indiana with occasional on site visits by taxpayer employees. There is one business location in Indiana.

I. **Tax Administration** - Penalty

DISCUSSION

The taxpayer argues the penalty should be waived as this is a first time audit and the taxpayer has performed their tax duties in a good faith manner.

The Department points out the taxpayer does not have a use tax accrual system. Furthermore, the taxpayer was aware the items taxed were taxable.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness,

thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

The Department finds the taxpayer was inattentive to tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer’s penalty protest is denied.